IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6906 OF 2004

Shri Chandrakant Sayajirao Shirsat .. Petitioner
Vs.
1. Shri B.Y. Pagare and ors. .. Respondents

WITH
WRIT PETITION NO. 6911 OF 2004

Shri Ramdas Yeshwant Mandlik .. Petitioner
Vs.
1. Shri B.Y. Pagare and ors. .. Respondents

WITH
WRIT PETITION NO. 6912 OF 2004

Shri S.G. Tidame .. Petitioner
Vs.
1. Shri B.Y. Pagare and ors. .. Respondents

WITH
WRIT PETITION NO. 6913 OF 2004

Smt. P.D. Pillai .. Petitioner
Vs.
1. Shri B.Y. Pagare and ors. .. Respondents

Mr. P.N. Joshi for the petitioner in all the matters.
Mr. A.H. Palekar, AGP for respondent nos.1, 12 and 13.
Mr. Y.R. Naik with Mr. Prashant Naik for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date of Reserve : July 20, 2006.

Date of Pronouncement: July 28, 2006.

P.C.:

1. All these petitions impugn a common order passed by the respondent no.1 under Section 88(1) of the Maharashtra Co-operative Societies Act, 1960 (the Act for short) on 3/2/2003 thereby fixing the individual liability of each of the petitioners and the amount of Rs.21 lacs to be paid by each one of them to the respondent no.2-society by way of damages/losses. The respondent no.2 is the Credit Co-operative Society of the employees of Hindustan Aranatics Limited, Nashik which is an undertaking of the Government of India and the total membership is 6200. It has been registered as a Co-operative Credit Society under the Act. All the petitioners are thus the employees of Hindustan Aranatics Limited, Nashik. They were elected as the Managing Committee members at the relevant time. There were in all 13 members of the Managing Committee and one expert director was co-opted subsequently, thus making the total strength of the directors to 14 and allegedly there were two groups in the Managing Committee, the first group was headed by Shri Bhausaheb N. Bankar and the other group was headed by Shri B.G. Khandelwal. A circular

resolution was taken out on 8/12/2000 under the signature of its Vice Chairman Shri P.P. Jopale proposing to transfer the fixed deposits from the State Bank of India to some other Co-operative Bank, namely, Nasik District Central Co-Op. Bank, Nasik Merchants' Co-op. Bank, Janlaxmi Co-op Bank, Business Co-op. Bank and Jawahar Co-op. Urban Bank Ltd. etc. and this proposal was moved mainly on the ground that as per the decision of the Supreme Court the interest earned on the fixed deposits with the Nationalised Bank was taxable whereas if such deposits were invested with the Co-op. Bank, the interest amount would not be taxable. This resolution was signed by seven members of the Managing Committee representing the Bankar group whereas six Managing Committee members representing the Khandelwal group did not sign the same. In the next meeting held on 8/1/2001 this resolution was not a subject matter for confirmation or for discussion and surprisingly between the period from 11/12/2000 to 4/4/2001 an amount of Rs.2.20 crores was invested with the Jawahar Co-op. Urban Bank Ltd. at Hyderabad by way of fixed deposit purportedly on the basis of the circular resolution dated 8/12/2000 and in total disregard and in

violation of the circular issued by the Reserve Bank of India on 20/7/2000 which was a moratorium order against Jawahar Co-op. Urban Bank Ltd. restraining it to accept any fixed deposit. It appears from the record that on 13/11/2000 the RBI had already issued a show-cause notice to the Jawahar Co-op. Urban Bank Ltd. to explain as to why its banking licence should not be cancelled and after conducting an inquiry ultimately the banking licence was cancelled on 15/5/2002. The Bank challenged the said order in Writ Petition No.21039 of 2002 before the Andhra Pradesh High Court and in the said writ petition the Deputy General Manager of RBI filed his counter affidavit and pointed out that the Bank had fraudulently resorted to mobilization of deposits of Rs.2.20 crores from the present respondent no.2-society.

. In the meanwhile, the audit reports for the year 2000-2001 of the society under Section 81 of the Act were made available and, therefore, the District Deputy Registrar, Co-op. Societies passed an order on 17/8/2002 directing an inquiry under Section 88(1) of the Act and appointed respondent no.1 as the Inquiry Officer/Authorised Officer, who submitted his report

on 3/2/2003 and fixed the liability by the impugned order. The names of the present petitioners appear at Sr. Nos.6, 9, 4 and 7 in the impugned order and each one of them has been directed to pay an amount of Rs.21 lacs to the society so as to make good the recovery of Rs.2.20 crores plus an amount of Rs.3000/- towards the expenses incurred in conducting the inquiry.

2. As noted earlier, the order passed by the respondent no.1 came to be challenged before the Divisional Joint Registrar in an appeal under Section 152 of the Act and subsequently before the State Government in a revision application under Section 154 of the Act and both the authorities have concurrently upheld the order of recovery passed by the respondent no.1 and fixing the liability against the members of the Managing Committee, including the present petitioners.

3. Mr. Joshi the learned counsel appearing for the petitioners, while challenging the impugned order, has submitted that the procedural requirements of Section 88 of the Act read with Rule 72 of the

Maharashtra Co-operative Societies Rules, 1961 (the Rules for short) have not been followed in as much as after receiving the report under Section 88(1), it was necessary to issue a charge-sheet against each of the petitioners/Managing Comittee Members thereby calling upon them to submit their returns and the order or recovery was required to be passed after allowing them to submit evidence and argue in defence. In short, as per Mr. Joshi, failure to issue the charge-sheet has vitiated the impugned order and it was necessary to remand the case to the respondent no.1 to pass a fresh order after issuing charge-sheet. He also submitted that the impugned order was premature in as much as it cannot be definitely stated at this stage that the amount deposited with the Bank (Jawahar Co-op. Urban Bank Ltd., Hyderabad) is not recoverable though a liquidator has been appointed by the Andhra Pradesh Government on the same time. As per Mr. Joshi every Managing Committee Member cannot be held liable equally.

4. Section 88 of the Act reads as under:-

88. Power of Registrar to assess damages against delinquent promoters, etc.- (1) Where,

> in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of commencement of such audit or date of order for inquiry, inspection or winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person or persons and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rates as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

. Subsection (1) thus states that where, as a result of an audit under Section 81, the Registrar is satisfied on the basis of the report made by the auditor that any person who has taken any part in the organisation or management of the society has, within

a period of five years prior to the date of commencement of such audit, misapplied or become liable or accountable for any money of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person after giving a reasonable opportunity to the person concerned to answer the charges, make an order requiring him to repay or restore the money with interest at such rates as the Registrar or the person authorities under this section may determine by way of compensation in regard to the misapplication, misfeasance or breach of trust as he may determine.

5. Rule 72 of the Rules prescribe the procedure for assessing damages against delinquent promoters, etc. under section 88 of the Act and it reads as under:-

> **72. Procedure for assessing damages against delinquent promoters, etc. under section 88.-**
> (1) On receipt of a report referred to in section 88 or otherwise the Registrar or any other person authorised by him may make such further inquiries as he may deem necessary regarding the extent to which the person who has taken any part in the organisation or

management of a society or any deceased, past or present officer of the society has misapplied or retained, or become liable or accountable for, any money or property of the society, or has committed misfeasance or breach of trust in relation to the society.

(2) On the completion of the further inquiries under sub-rule (1), where necessary, the Registrar or the person authorised by him shall issue a notice to the person or persons concerned furnishing him or them with particulars of the acts of misapplication, retention, misfeasance or breach of trust and the extent of his or their liability involved therein and calling upon him or them to put in statements in his or their defence within fifteen days of the date of issue of the notice.

(3) On receipt of the statements referred to in sub-rule (2), the Registrar or the persons authorised by him, if he is satisfied that there are reasonable grounds for holding the person or persons liable, shall frame charges.

(4) The person or persons concerned shall, after the charges are framed be asked to put in his statement in defence and to indicate the documentary or oral evidence which he would like to produce. The Registrar or the person authorised by him may permit production of other documentary or oral evidence, if considered necessary subsequently.

(5) The Registrar or the person authorised by him, shall thereafter record the evidence led by the society or the person or persons concerned and take on record the documents proved by them and shall thereafter fix a date for hearing arguments of both the parties.

(6) On the day fixed for hearing under sub-rule (5), the Registrar or the person authorised by him, shall hear the arguments and may pass his final orders on the same day or on any date fixed by him within sixty days

from the date on which the hearing was completed. On the date so fixed, the Registrar or, as the case may be, the person authorised by him shall, make his final order, either ordering repayment of the money or return of the property to the society together with interest at such rate as may be specified by him or to contribute such amount to the assets of the society by way of compensation in regard to misapplication, retention, misfeasance or breach of trust as may be determined or may reject the claim submitted on behalf of the society.

(7) The Registrar or the person authorised by him, may also provide in his order for the payment of the cost of the proceeding under this rule or any part of such cost as he thinks just.

(8) The Registrar or the person authorised by him shall furnish a copy of his order, under sub-rule (6) to the party concerned within ten days of the date on which he make final order.

. Thus Rule 72 sets out the stages after receiving a report referred to in Section 88 of the Act and the first stage is to order further inquiry either by the Registrar himself or by any authorised person regarding the extent to which the persons who have taken part in the organisation or management of the society become liable or accountable for any money of the society. On completion of the further inquiry under subsection (1), where necessary, the Registrar or the person authorised by him shall issue a notice to the person or persons concerned furnishing him or

them with particulars of the acts of misapplication, breach of trust etc. calling upon him or them to put in statements in his or their defence within fifteen days of the date of issuance of notice. This is stage no.2. In the third stage the Registrar or the person authorised by him on his satisfaction that there are reasonable grounds for holding the person or persons liable shall frame charges on receipt of the statements referred to in sub-rule (2). In the fourth stage, the persons concerned shall, after the charges are framed be asked to put in their statement in defence and to indicate the documentary or oral evidence which they would like to produce. The Registrar or the person authorised by him shall thereafter record the evidence led by the persons concerned as well as the society and take on record the documents proved by them and then fixed a date for hearing of arguments of both the parties and in the final stage, after hearing the parties and by taking into consideration the respective claims and counter claims, pass a final order either ordering repayment of the money to the society together with interest or to contribute such amount to the assets of the society

by way of compensation.

6. In the instant case, on receipt of the audit report under Section 81 by order dated 17/8/2002 the District Registrar, Co-op. Societies appointed the respondent no.1 to conduct an inquiry under Section 88(1) of the Act. In turn, the Inquiry Officer issued a notice under Rule 72(2) of the Rules to each of the Managing Committee Members on 21/9/2002 clearly referring to the circular resolution dated 8/12/2000 and the amount of Rs.2.20 crores invested by the respondent no.2-society on the basis of the said resolution with the Bank. In all 18 persons were issued the said show-cause notice, 14 of them were members of the Managing Committee where as remaining four were the employees of the society. The show-cause notice was replied by some of the petitioners on 19/11/2002. The respondent no.1 further called upon the petitioners for hearing before him on 5/10/2002, 9/10/2002, 19/10/2002, 26/10/2002, 16/11/2002, 19/11/2002 and 11/12/2002. He considered the defence statement submitted by each of the petitioners as well as the response he received from the liquidator of the Bank. He noted at first that the Bank was not within the territorial limits of the

society and though the Bank had announced the interest rate of 16.5% the society invested at the interest rate of 14% with the very same Bank and it was not known as to why the interest rate was reduced by 2%. The society did not inquire into the financial position of the Bank before such deposits were invested. In the territorial area of the society there were other Co-operative Banks and none of them were considered. Hardly about Rs.10 to 15 lacs from the fixed deposits were received from the Bank by the society. Mr. Pankaj Mantri who acted as the agent of the Bank played a major role in inducing the petitioners and some other members of the Managing Committee and they, in turn, acted in collusion with the said agent. It was found during the said inquiry that Mr. Mantri was advanced OD loan of Rs.60 lacs against the fixed deposit transaction of the society and he failed to repay the said loan. In short, the respondent no.1 concluded that the petitioners were personally responsible for causing loss to the society and, therefore, the Managing Committee Members were liable to make said loss good, more so when the circular resolution was not at any time placed before the Managing Committee for its confirmation and the

resolution sought to be relied upon was flagrantly in violation of the bye-laws of the society. In short, the society was defrauded and, therefore, the petitioners were liable.

7. On the issue of framing of the charges, both the appellate as well as the revisional authority have adverted to and held that on the face of the circular resolution the deposit amount was invested and that was the only charge against the petitioners. They have also noted from the proceedings of the respondent no.1 that a copy of the audit report received under Section 81 was handed over to each of the petitioners during the course of the inquiry and the show-cause notice was replied to. Their defence was taken into consideration. Admittedly, all the petitioners were the signatories to the circular resolution and they had with them a few years experience as the Managing Committee Members of the society, they were not novice and were familiar with the bye-laws of the society, the provisions of the Act and the Rules thereunder. The show-cause notice issued to them is clearly indicated the charges against them, namely, that they had usurped their powers and acted illegally in

investing an amount of Rs.2.20 crores with the Bank thereby causing loss to the society. They were also informed about their misdeeds causing loss to the society by the auditor's report, a copy of which was made available to them. Thus, on receipt of the report under Section 81 of the Act, the authorised officer had issued a show-cause notice intimating the charges against the petitioners and petitioners were fully aware of the same, even when they filed their defence statement. They were represented through an Advocate. Section 88 of the Act empowers the Registrar to assess the charges against the Directors etc., including the persons who have taken part in the administration or the management of the society or the officers of the society and, therefore, the members of the Managing Committee do fall within the sweep of the Registrar's powers to order an inquiry against them so as to assess the damages i.e. the qualification of the loss caused to the society by each of them individually or collectively and to recover the same from them. In the instant case, as noted earlier, the members of the society are the employees of M/s. Hindustan Aranatics Ltd. and it is a credit co-operative society. Its deposits are not ensured

like the deposits of the Banks and, therefore, the Managing Committee are required to be more alert and careful while discharging their duties as such. The elected directors are the custodians of the funds and property of the society. They are required to performed their duties strictly as per the Act, Rules and Bye-laws and they cannot usurp their powers. Failure to discharge their duties as per the statutory provisions and the Bye-laws makes them accountable and liable to compensate the loss/damage from their personal property. The learned counsel for the petitioners stated that as of now it cannot be accepted for sure that the Bank or its liquidator will not refund any deposit amount over and above the amount already repaid and, therefore, it would be premature to recover the damages as per the impugned order at this stage. There is no doubt that the Bank is under liquidation and in case the society receives any amount from the said Bank or its liquidator in future, it can be proportionately refunded to the petitioners by the society. At the same time, it must be remembered that the elected directors cannot be equated with any other members of the society.

8. In the circumstances, the concurrent findings recorded by the appellate authority and the revisional authority do not call for any interference in this petition under Article 227 of the Constitution, the principles of natural justice have been duly complied with and the alleged procedural defects, as set out under Section 88(1) read with Rule 72 do not warrant interference in the said findings.

9. Hence these petitions fail and the same are hereby rejected summarily. In the event of the Bank or its liquidator or any other successor agency to the said Bank refunds part or the total dues to the society at any time in future, the said amount shall be proportionately refunded to the petitioners by the society.

(B.H. Marlapalle,J.)